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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1482

EVO R. MANZARDO, ET AL., *Petitioners*

v.

THE PULLMAN COMPANY, ET AL., *Respondents*

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

BRIEF FOR RESPONDENT BROTHERHOODS IN OPPOSITION

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May 3, 1974

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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RESTATEMENT OF THE CASE

Petitioners' Statement of the Case is considered by the respondent unions (Sheet Metal Workers' International Association, et al., hereinafter referred to as the Brotherhoods) to be sufficient and accurate for purposes of the disposition of the petition, except as to petitioners' description of the nature of the rulings of the court below.

Contrary to statement of petitioners, affi
the court below of dismissal of Count II by t
Court was not predicated upon the decision
cial Board of Adjustment. The Court
found that the District Court had not er
missing Count II of the complaint when it
that "the complaint was 'devoid of materi
support the charges of lack of fair represe
discrimination by the brotherhoods."[1]

The court below sustained the dismis
charges in Count III of the complaint bec
titioners' abandonment of their attack (C
the validity of the decision of the Special

ARGUMENT

The decision below is clearly correct.
conflict between it and the decision of th
Czosek,[2] or any other relevant authority
by petitioners. No important question of
is presented relating to the jurisdiction of
courts to entertain an action brought by
ployees against their collective bargaining
tive for an alleged breach of the duty of fa
tation.

Petitioners' contention that the decisio
conflict with *Czosek* is clearly without m
shown to be predicated upon a misreadin
of the decisions below. The District
(App. A13) as to Count II that while th

[1] Petitioners' misconception of the rulings of th
beclouds also to some extent their specification of
sented, as will appear from our presentation of gro
denial of the petition.

[2] 397 U.S. 26

contained charges of lack of fair representation and discrimination by the Brotherhoods, it was devoid of material facts to support such charges.[3] The District Court further found (App. A14) that although petitioners cited a line of cases, including *Czosek,* holding that a breach of a union's duty of fair representation under the Railway Labor Act 45 USC 151, et seq. is cognizable in the federal courts, "fatal to plaintiffs' claim" was that there was no showing by petitioners that the Brotherhoods had acted in an arbitrary or discriminatory manner, or in bad faith in the processing of petitioners' claims.

Clearly contrary to petitioners' contentions here, the court below found (App. A4) that petitioners' failure to persist in their attack (Count I) on the validity of decision of the Special Board, did "not preclude" petitioners from asserting and the court considering their unfair representation charges against the Brotherhoods in Count II.[4]

Petitioners' attempt to show that the decision below is erroneous because based upon a misconception of the source of "jurisdiction" of the federal courts to entertain an action charging lack of fair representation, discloses only that petitioners are not cognizant, as was the court below, of the ruling by this Court that

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[3] The District Court further found (App. A13) contrary to the allegations of petitioners that affidavits filed in support of the Brotherhoods disclosed their persistent effort to obtain satisfaction of petitioners' claims for separation allowances, and that the Brotherhoods undertook to promptly process claims filed by petitioners.

[4] The court below analyzed in detail (App. A 4-5) the allegations in Count II of the complaint, and held that they failed to contain "material facts" to sustain petitioners' claims.

Section 1337 of the Judicial Code, in vesting jurisdiction in the District Courts to entertain such actions arising under the Railway Labor Act, does not create such causes of action, but only confers jurisdiction for their adjudication.[5]

The "strawman" that petitioners seek to construct to support their contention that the court below based its affirmance on a conclusion that the District Court did not, "entertain" petitioners' complaint as concerns Count II because of reliance on the decision of the Special Board ruling that petitioners had no "contract" rights to separation allowances, withers and dies upon exposure. While ruling clearly (App. A4) to the contrary, the court below, adhered to the prior rulings of this Court and those in the several circuits,[6] that the District Court had exercised properly the jurisdiction provided by Section 1337, to determine whether the complaint alleging a breach of a duty implied under the Railway Labor Act, stated a claim for which relief could be granted.

With respect to Count III wherein petitioners contended that Pullman and the respondent railroads and unions conspired to deprive petitioners of their "rights" to receive separation allowances under the agreement involved, the court below correctly ruled (App. A4) that petitioners' abandonment of their attack on the validity of the Special Board's decision,

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[5] *Montana-Dakota Utilities Co.* v. *Northwestern P.S.C.*, 341 U.S. 247, 249.

[6] *Danna* v. *Air France*, 463 F.2d 408 (2nd Cir. 1972); *Ousts* v. *Maryland National Ins. Co.*, 470 F.2d 790, 791 (9th Cir., 1972); *West Coast Exploration Co.* v. *McKay*, 213 F.2d 582, 591 (D.C. Cir. *en banc* 1954) *cert. den.* 347 U.S. 989; *Pellicer* v. *Brotherhood of Ry. & S.S. Clerks*, 118 F.Supp. 254, 257 (S.D. Fla. 1953).

constituted acceptance by petitioners that they possessed no rights under the agreement.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 3, 1974

Certificate of Service

I certify that service of this brief was made this day by the mailing, postage prepaid, of three (3) copies of this brief to counsel for each party of record.

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William J. Hickey

May 3, 1974